IN THE HIGH COURT OF BOMBAY AT GOA
***

WRIT PETITION NO. 346 OF 2003
AND CIVIL APPLICATION NO. 181 OF 2003

1. Shri Pandurang Narayan
   Kamat, s/o late Narayan
   Kamat, major of age,
   landlord, married,
   and his wife,

2. Smt. Laxmi Pandurang Kamat,
   major of age, married,
   housewife, both r/o
   Galle, Poingiunim,
   Canacona, Goa. ... Petitioners

Versus

1. Smt. Sumitabai Prabhu
   Gaonkar, major in age,
   married, housewife and
   her husband,

2. Shri Vishwanath Prabhu
   Gaonkar, major in age,
   married in service, both r/o
   Jogeshwari, Bombay,
   both represented by their
   constituted attorney Shri
   Venctexa Vithal Kamat,
   r/o Poinguinim-Galle,
   Canacona, Goa. ... Respondents.

Ms. Sudha Pai Kir, advocate for the petitioners.

CORAM : F. I. REBELLO, J.

DATE : 18th July, 2003.

ORAL ORDER

The suit earlier was decreed ex parte. A revision was preferred which was allowed by this Court by its Order of 13th October, 2000 and the matter was remanded to the trial Court. When the matter went back there are some subsequent events, including amendment to the plaint which was allowed. The respondents herein thereafter applied that the evidence of the

witness who was examined on behalf of the plaintiffs be discarded and they be permitted to file affidavit under Order 14 Rule 1 of the C.P.C. of the attorney Janardhan Anant Kamat. In the application dated 18th January, 2003, it was brought to the attention of the Court that the attorney Shri Vithal Anant Kamat on account of his service had difficulty to remain present in the Court and, therefore, another attorney, Janardhan Anant Kamat had been appointed to look after the matter and also depose. The earlier evidence which was recorded was ex parte.

The petitioners herein filed their reply opposing the said application.

2. The trial Court by its Order of 8th July, 2003 allowed the said application and permitted the new attorney to be examined by filing his affidavit by way of examination-in-chief under Order 18 Rule 4 of the C.P.C. There is no order passed by the Court at least in the effective part of the order, which shows that the earlier evidence recorded has been discarded.

3. The challenge by the petitioner is to the said Order on the ground that the respondents/plaintiffs cannot be permitted to lead evidence of another witness when earlier one witness was in the box. The Civil Procedure Code after the judgment of this Court stands amended. A party is given an opportunity of three adjournments after the hearing starts. The

respondents pointed out to the Court in the application that their witness would not be available on account of his being employed. Apart from that the earlier evidence had gone ex parte. In other words, that witness had not been cross-examined. The evidentiary value of that witness after the matter was sent back would have been considered if he was made available to the petitioners for cross-examination. Before that stage could reach an application was moved by the respondent herein that the evidence of the new attorney who had since been appointed be allowed. The trial Court has so permitted it. It is purely a matter of exercise of discretion. The order does not suffer from any error apparent on the face of the record. Once discretion has been exercised by the trial Court, it is not for this Court in exercise of extra-ordinary jurisdiction, to interfere with such orders as all that happens is that the respondents/plaintiffs are entitled to a fair opportunity of leading evidence. The trial Court has in its order not granted any relief to discard the evidence of the earlier witness.

In the light of that no interference is called for. The Writ Petition alongwith the Civil Application NO.181/2003 are rejected.

F. I. REBELLO, J.

mc.